DOCKET NO.: X03-HHD-CV11-6032094-S	:	SUPERIOR COURT
JAMES J. DESALLE, ET AL.	:	COMPLEX LITIGATION DOCKET
v.	:	JUDICIAL DISTRICT OF HARTFORD
WAL-MART STORES EAST, LP, ET AL.	:	October 13, 2016

MEMORANDUM OF DECISION RE: FLORIDA SEAT BELT DEFENSE

Before the court are two motions and extensive related briefing on the issue of whether the Florida seat belt defense applies in this case. Those motions are: (1) defendant Wal-Mart Stores East, LP's (Wal-Mart) motion to apply Florida law re: seat belt (Wal-Mart's motion) (#236.00)[1]; and (2) plaintiffs' motion in limine to preclude admission of seat belt defense (plaintiffs' motion) (#401.00). The principal issue presented by these motions is whether Wal-Mart may assert the Florida seat belt defense as to plaintiffs James DeSalle (DeSalle) and Maria Videira (Videira).[2] For the reasons stated below, the court concludes that the Florida seat belt defense may be asserted. Accordingly, the court grants Wal-Mart's motion and denies plaintiffs' motion.

In connection with resolving the instant motions, the court's review has included, but is not necessarily limited to, the following: (1) defendant Cooper Tire & Rubber Company's (Cooper) motion to apply Florida law dated November 6, 2014 (#227.00) (adopted by Wal-Mart in #236.00); (2) plaintiffs' opposition thereto dated January 6, 2015 (#235.00); (3) Wal-Mart's motion to apply Florida law dated January 6, 2015 (#236.00); (4) plaintiffs' opposition thereto

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[1] On or about September 21, 2016, counsel for the parties confirmed in correspondence with Mr. O'Connell, the court officer assigned to this docket, that they have no objection to the undersigned taking over responsibility for those seat belt defense-related motions that were filed and argued prior to the undersigned's assignment to the X03 docket, which commenced on September 5, 2016.

[2] During oral argument on September 23, 2016, the parties confirmed that the only plaintiffs to whom the seat belt defense issue applies are DeSalle and Videira.

dated January 6, 2015 (#237.00); (5) Cooper's reply dated January 9, 2015 (#240.00); (6) plaintiffs' supplemental memorandum of law regarding "seat belt defense" dated February 9, 2015 (#243.00); (7) plaintiffs' supplemental memorandum of law regarding defendants' effort to apply Florida law regarding the "seat belt defense" dated February 18, 2015 (#248.00); (8) plaintiffs' supplemental memorandum dated July 14, 2016 (#365.00); (9) Wal-Mart's supplemental memorandum of law on choice of law dated July 14, 2016 (#366.00); (10) Wal-Mart's second supplemental memorandum of law on choice of law dated August 4, 2016 (#370.00); (11) plaintiffs' final supplemental memorandum dated August 4, 2016 (#372.00); (12) plaintiffs' motion in limine dated August 22, 2016 (#401.00); (13) Cooper's memorandum re: Florida common law jury instruction on plaintiffs' failure to wear seat belts dated August 24, 2016 (#408.00); (14) Wal-Mart's objection thereto dated September 6, 2016 (#423.00); (15) Wal-Mart's supplemental memorandum of law on choice of law dated September 28, 2016 (#445.00); and (16) plaintiffs' supplemental memorandum dated September 28, 2016 (#446.00). The court's review included certain filings by Cooper, which is no longer a party, either because Wal-Mart expressly incorporated such filings into certain of its briefs or because they were referenced during the August 22, 2016 oral argument (before the Honorable Grant Miller), to which this court has listened.[3] The issue was also argued on September 23, 2016 before this court.

I
FACTUAL BACKGROUND

This case arises from a serious motor vehicle accident in Palm Coast, Florida, involving the seven plaintiffs. A brief description of their relationships is in order. Plaintiffs Juveniano

[3] During the September 23, 2016 hearing, counsel were invited to identify, in their September 28, 2016 submissions, any additional oral arguments to which, in their view, the court should listen concerning the seat belt defense issue. No additional hearings were identified.

Videira (Juveniano) and Eleanor Videira (Eleanor) are the parents of plaintiff Maria Videira (Videira), who is the mother of two minor plaintiffs, M.G. and J.G. Plaintiff James DeSalle (DeSalle) is the father of the third minor plaintiff, H.D.

On February 22, 2009, the seven plaintiffs were traveling in Juveniano and Eleanor's 1998 Plymouth Voyager minivan (vehicle). DeSalle and Videira, and the three minor plaintiffs, all of whom resided in Shelton, Connecticut at the time, were visiting Florida, where Juveniano and Eleanor were residing. DeSalle, Videira, and the three minor plaintiffs were on vacation for about one week, visiting Orlando, then visiting Juveniano and Eleanor in Daytona Beach. The accident occurred on the interstate highway, I-95, while the plaintiffs were making their way to the Jacksonville, Florida airport for the purpose of DeSalle, Videira, and the children's return flight to Connecticut.

Juveniano was the driver of the vehicle at the time of the accident. Eleanor was a front seat passenger. DeSalle, Videira, and the minor plaintiffs were seated in the back seats.

Plaintiffs allege that the left rear tire suffered a tread separation while the vehicle was traveling on the highway. The tire was a Mastercraft Sensys 01, manufactured by Cooper Tire in Albany, Georgia in 2003. The vehicle overturned, and DeSalle and Videira were ejected from the vehicle, eventually coming to rest on an unpaved shoulder. Among the plaintiffs, DeSalle and Videira are alleged to have suffered the most serious injuries, including paraplegia for DeSalle. There is evidence that neither DeSalle nor Videira was wearing a seat belt at the time of the accident. DeSalle and Videira were over the age of 18 at the time of the accident. DeSalle and Videira received preliminary medical care in Florida.

Juveniano and Eleanor had purchased the vehicle for the purpose of using it in Florida. Throughout the year, Juveniano and Eleanor reside in both Connecticut and Florida, generally

spending the summer months in Connecticut. They in fact used the vehicle during the times they resided in Florida. The vehicle would remain in Florida when they would reside in Connecticut for the summer. The vehicle was registered in Florida from January 2007 through February 22, 2009, the date of the accident. The vehicle was serviced in Florida, notably, as close in time to the accident as three weeks prior and nine days prior. On February 13, 2009, nine days prior to the accident, the vehicle was serviced at a Wal-Mart location in Titusville, Florida. At that time, Wal-Mart replaced a rear tire on the vehicle (but not the one that suffered the tread separation referenced above). Additional facts will be set forth as necessary.

II
DISCUSSION

A
Existence of Actual Conflict of Laws

The parties agree that, if any choice of law inquiry is made, the choice is between Connecticut law and Florida law. The plaintiffs argue that Connecticut law applies and bars any seat belt defense. Wal-Mart argues that Florida law applies and permits such a defense.

Plaintiffs contend that a so-called "false conflict" of laws exists, and, therefore, the forum law applies. The term "false conflict" has been used "to describe cases where application of the laws of two or more jurisdictions with contacts to the litigation reach identical results, thus eliminating any potential conflict of laws." *O'Connor* v. *O'Connor*, 201 Conn. 632, 657 n.18, 519 A.2d 13 (1986). Plaintiffs' argument in this regard can be distilled as follows: Florida's seat belt defense requires a statutory violation; neither DeSalle nor Videira violated Florida's seat belt statute; therefore, there is no conflict between Connecticut and Florida law on this issue. The fundamental flaw in plaintiffs' argument is that Florida's seat belt defense does not require a statutory violation. See footnote 6 of this opinion and the accompanying text.

Accordingly, faced with an actual conflict, the court reviews Connecticut's and Florida's laws regarding the viability of a seat belt defense.

1
Connecticut law

The parties agree that, if Connecticut law applies to the seat belt defense issue, General Statutes § 14-100a(c)(3) (enacted in 1985) would preclude any evidence of DeSalle's and/or Videira's nonuse of an available seat belt and would bar Wal-Mart from asserting a seat belt defense. With certain exceptions not applicable here, General Statutes § 14-100a(c)(1) requires the operator and any front seat passenger to wear a seat belt while the motor vehicle is being operated on the highway. Section 14-100a(c)(3) in turn provides: "Failure to wear a seat safety belt shall not be considered as contributory negligence nor shall such failure be admissible evidence in any civil action."

Plaintiffs argue, and Wal-Mart disagrees, that Connecticut's seat belt statute is a "procedural statutory rule of evidence," such that no choice of law analysis is necessary to determine which substantive law applies. (#235.00.) Yet, the legislative history underlying the enactment of § 14-100a(c)(3) makes clear that the statute was designed to abolish the seat belt defense as a matter of Connecticut's substantive law. See, e.g., 28 H.R. Proc., Pt. 23, 1985 Sess. p. 8354, remarks of Representative Robert Farr. Indeed, in its decision upholding the constitutionality of § 14-100a(c)(3), the Appellate Court described the effect of the legislation as "[e]liminating the seat belt defense." *Bower* v. *D'Onfro*, 38 Conn. App. 685, 691, 663 A.2d 1061 (1995). In fact, the *Bower* Court repeatedly referenced the "seat belt *defense*," as opposed to an evidentiary or procedural rule. See id., 692-96.

The court concludes that § 14-100a(c)(3) is not merely an evidentiary rule, but is substantive in nature. *State* v. *Almeda*, 211 Conn. 441, 453-54 (1989), which defines the

difference between substantive and procedure, does not lead to a different conclusion. Moreover, the fact that the express language of § 14-100a(c)(3) uses the word "evidence" does not render the statute a mere evidentiary rule.[4] See Restatement (Second), Conflict of Laws § 138, comment (c) (1971) ("On occasion, a rule phrased in terms of evidence may in fact be a rule of substantive law."). Accordingly, because the court concludes that Connecticut's seat belt statute is substantive in nature, the court continues with its choice of law analysis.

2

Florida law

Florida law provides for a seat belt defense in the context of comparative negligence. An historical review of the seat belt defense under Florida law is necessary in order to understand this thorny issue.

In 1984, in *Insurance Company of North America* v. *Pasakarnis*, 451 So. 2d 447, 449, 453 (Fla. 1984) (*Pasakarnis*), the Florida Supreme Court first recognized the viability of a common law seat belt defense.[5] The court described the defense and its elements as follows:

> Defendant has the burden of pleading and proving that the plaintiff did not use an available and operational seat belt, that the plaintiff's failure to use the seat belt was unreasonable under the circumstances, and that there was a causal relationship between the injuries sustained by the plaintiff and plaintiff's failure to buckle up.

Id., 454.

In 1986, the Florida legislature passed the "Florida Safety Belt Law." Ch. 86-49, § 2, Laws of Fla. (codified at § 316.614(1)-(10), Fla. Stat. (Supp. 1986)). Generally speaking, the statute required the operator and any front seat passengers to wear a seat belt during the

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[4] Plaintiffs' reliance, in support of their procedural argument, on *Hogan* v. *Novartis Pharmaceuticals Corp.*, No. 06-CV-0260, 2011 U.S. Dist. LEXIS 37171 (E.D.N.Y. April 6, 2011), is misplaced, as *Hogan* stands for the principle that the Federal Rules of Evidence apply in a federal diversity action.

[5] Unlike in Florida, "there has never been an established common law duty to wear a seat belt in Connecticut." *Bower* v. *D'Onfro*, supra, 38 Conn. App. 692.

operation of a motor vehicle on Florida's roads. As reflected in the legislative history underlying the bill, as amended, enacted as § 316.614, Representative John Renke II stated the following:

> There has been some continued discussion regarding the amendment that I proposed to this bill relative to the *Pasakarnis* decision and regarding the admissibility of failure to wear a seat belt in personal injury litigation. I want to reiterate that the amendment was not intended to in any way alter the mitigation of damages rule announced in *Pasakarnis*. We simply wanted to make sure that violation of the new statute does not by itself amount to negligence per se or by itself amount to prima facie negligence for any comparative negligence purposes. *Florida would continue to follow the* Pasakarnis *decision, and this legislation is not intended to either alter or extend that decision.*"

(Emphasis added.) Representative John K. Renke II, Statement of Legislative Intent on CS/HB 40, Journal of the Florida House of Representatives, 88th Reg. Sess., p. 435 (May 19, 1986).

In 1990, the legislature amended § 316.614 to preclude the possibility that an injured plaintiff would be penalized twice for failing to use an available seat belt, that is, by clarifying that a seat belt violation could be considered in the context of comparative negligence, but not mitigation of damages. See *Ridley* v. *Safety Kleen Corp.*, 693 So. 2d 934, 941 (Fla. 1996).

In 2000, the statute was amended again for the purpose of raising the age (from sixteen to eighteen) at which passengers must be restrained before the driver can lawfully operate the motor vehicle.

Section 316.614 currently provides in relevant part:

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(4) It is unlawful for any person:

(a) To operate a motor vehicle in this state unless each passenger and the operator of the vehicle under the age of 18 years are restrained by a safety belt or by a child restraint device pursuant to s. 316.613, if applicable; or

(b) To operate a motor vehicle in this state unless the person is restrained by a safety belt.

(5) It is unlawful for any person 18 years of age or older to be a passenger in the front seat of a motor vehicle unless such person is restrained by a safety belt when the vehicle is in motion.

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(10) A violation of the provisions of this section shall not constitute negligence per se, nor shall such violation be used as prima facie evidence of negligence or be considered in mitigation of damages, but such violation may be considered as evidence of comparative negligence, in any civil action.

Fla. Stat. § 316.614. To paraphrase these statutory obligations, subsection (4) requires the *operator* of a motor vehicle to wear a seat belt and prohibits the operation of a motor vehicle unless all passengers under the age of 18 are properly restrained, and subsection (5) requires that all *front seat passengers* 18 years of age or older wear a seat belt. Absent is a statutory requirement that back seat passengers over the age of 18 wear a seat belt.

In *American Automobile Association, Inc.* v. *Tehrani*, Nos. BI-426, BI-442, BI-464, BI-471, BI-472, and BI 476, 1987 Fla. App. LEXIS 8896 (Fla. Ct. App. 1st Dist. June 12, 1987), the Florida Court of Appeal for the 1st District rejected the movants' argument that the Florida Safety Belt Law "should somehow establish or control the parameters of the *Pasakarnis* 'seat belt defense.'" *American Automobile Assn., Inc.* v. *Tehrani*, supra, *1-2. At the time of the accident, the injured plaintiffs, Lorestani and Tehrani, were seated in the front passenger seat and the back seat, respectively; neither was wearing a seat belt. *American Automobile Assn., Inc.* v. *Tehrani*, 508 So. 2d 365, 368 (Fla. 1st Dist. Ct. App. 1987). Relying on "a specific statement of legislative intent *not* to alter the *Pasakarnis* rule," the court concluded that "the enactment clearly cannot operate to preclude application of the *Pasakarnis* rule to rear seat passengers as well as to front seat passengers." (Emphasis in original.) *American Automobile Assn., Inc.* v. *Tehrani*, supra, 1987 Fla. App. LEXIS 8896, *2-3. In other words, the court applied *Pasakarnis* to "a failure to use any available seat belt in a car, not merely those in the front seat." Id., *2.

Accordingly, *Tehrani* — a Florida appellate decision — stands for the principle that the *Pasakarnis* common law seat belt defense remains available even where there is no statutory seat belt violation by the injured passenger.

In 1996, the Florida Supreme Court confirmed that the Florida Safety Belt Law did not abrogate the *Pasakarnis* common law seat belt defense. In *Ridley* v. *Safety Kleen Corp.*, supra, 693 So. 2d 934, in the context of considering the impact of a 1990 amendment to § 316.614, the Court stated:

> [O]ur review of the amended statute and its legislative history leads us to conclude that *the statute was not intended to alter the* Pasakarnis *rule*. Rather, we believe that the 1990 amendment was enacted to clarify and standardize the manner in which a plaintiff's failure to use a seat belt was to be utilized in a civil action, and to preclude the possibility that an injured plaintiff would be penalized twice for failing to use an available seat belt [(i.e., having it considered in the context of comparative negligence, as well as mitigation of damages)]. With the amendment in 1990, the legislature achieved this end by limiting the use of evidence of a plaintiff's failure to use a seat belt to only one issue — comparative negligence.

(Emphasis added.) Id., 941. The court in *Ridley* went on to find that

> the legislature did not make the failure to wear a seat belt negligence per se or prima facie evidence of negligence. . . . [W]e conclude a jury may still consider the availability or operability of a seat belt in its broader negligence analysis since it is part of the circumstances upon which the jury may decide whether the plaintiff's omission was reasonable.

Id., 943 n.14.

In 2007, in *Kearney v. Auto-Owners Insurance Co.*, No. 8:06-cv-595-T-24-TGW, 2007 WL 2298031 (M.D. Fla. 2007), a federal district court in Florida reached the same fundamental conclusion as the *Tehrani* court, namely, that the *Pasakarnis* common law seat belt defense remains available even where there is no statutory seat belt violation by the injured passenger.[6]

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[6] *Tehrani* and *Kearney* refute plaintiffs' argument that the Florida seat belt defense does not apply where there is no violation of the Florida seat belt statute.

In *Kearney*, by virtue of adopting the magistrate judge's report and recommendation, the district court held that the defendant was "permitted to assert an affirmative defense under common law that the plaintiff failed to use an operational seat belt." Id., *1. This was despite the fact that the injured plaintiff was a minor (17 years of age) and could not have been found in violation of the statute, § 316.614.

Although the plaintiffs suggest that the Florida Safety Belt Law abrogates or preempts the common law, they have not cited any authority, and the court is not aware of any, that stands for such a proposition. Indeed, to the contrary, the authorities discussed above have squarely rejected such an argument. Relatedly, plaintiffs rely on *Jones* v. *Alayon*, 162 So. 3d 360 (Fla. 4th Dist. Ct. App. 2015), for the proposition that, when the Florida seat belt defense applies, there is a tripartite jury instruction that must be given, one prong of which requires a statutory seat belt violation. Plaintiffs argue that, therefore, the Florida seat belt defense does not apply here because there is no statutory seat belt violation. Simply put, the court has closely reviewed *Jones*, and *Jones* reflects nothing of the kind.

B

Connecticut's Choice of Law Rules

Having reviewed the substantive laws of Connecticut and Florida and concluded that an actual conflict exists, the court now turns to the choice of law principles that control. In *O'Connor* v. *O'Connor*, supra, 201 Conn. 648, our Supreme Court "abandon[ed] categorical allegiance to the doctrine of lex loci delicti in tort actions."[7] The Court reasoned that strict application of the doctrine had become outdated and that the overwhelming trend among state courts reflected an abandonment of any blind adherence to the rule. Id., 639-48. In the doctrine's stead, the Court "incorporate[d] the guidelines of the Restatement as the governing

[7] Lex loci delicti is, of course, "the doctrine that the substantive rights and obligations arising out of a tort controversy are determined by the law of the place of injury." Id., 637.

principles for those cases in which application of the doctrine of lex loci would produce an arbitrary, irrational result." Id., 650. Specifically, the Court adopted the "most significant relationship" test set forth in §§ 6 and 145 of the Restatement (Second) of Conflict of Laws. *O'Connor* v. *O'Connor*, supra, 650-51.

Section 145 of the Restatement (Second) of Conflict of Laws provides in part: "(1) The rights and liabilities of the parties with respect to an issue in tort are determined by the local law of the state which, with respect to that issue, has the most significant relationship to the occurrence and the parties under the principles stated in § 6." Restatement (Second), Conflict of Laws § 145(1) (1971).

Section 6 of the Restatement (Second) of Conflict of Laws provides that, when there is no statutory directive on choice of law in the forum state, "the factors relevant to the choice of the applicable rule of law include (a) the needs of the interstate and international systems, (b) the relevant policies of the forum, (c) the relevant policies of other interested states and the relative interests of those states in the determination of the particular issue, (d) the protection of justified expectations, (e) the basic policies underlying the particular field of law, (f) certainty, predictability and uniformity of result, and (g) ease in the determination and application of the law to be applied." Restatement (Second), supra, § 6(2).

Section 145(2) provides: "Contacts to be taken into account in applying the principles of § 6 to determine the law applicable to an issue include: (a) the place where the injury occurred, (b) the place where the conduct causing the injury occurred, (c) the domicil, residence, nationality, place of incorporation and place of business of the parties, and (d) the place where the relationship, if any, between the parties is centered." Restatement (Second), supra, § 145(2).

"These contacts are to be evaluated according to their relative importance with respect to the particular issue." Id., § 145.

C

Application of Lex Loci Doctrine

As a threshold matter, the court does not believe that the application of the lex loci doctrine here (such that Florida law would apply) would produce "an arbitrary, irrational result." *O'Connor*, 201 Conn. 650. In *O'Connor*, the Court stated that, under the circumstances of that case, "application of the lex loci delicti doctrine makes determination of the governing law turn upon a purely fortuitous circumstance: the geographical location of the parties' automobile at the time the accident occurred." Id., 645-46.

Here, it was not purely fortuitous that the vehicle, as well as DeSalle and Videira, were located in Florida at the time of the accident. Florida was DeSalle and Videira's destination, as they were on a vacation that included Orlando and Daytona Beach, where Juveniano and Eleanor were residing. The vehicle was purchased for the purpose of being operated in Florida; it was registered, operated, maintained, and stored in Florida from 2005 through February 22, 2009, even when Juveniano and Eleanor resided in Connecticut for the summer. The acts and/or omissions on the part of Wal-Mart that plaintiffs challenge took place at the Wal-Mart store location in Titusville, Florida. Based on these circumstances, the court cannot find that Florida, as the location of the accident, was fortuitous, or that the application of Florida law would produce "an arbitrary, irrational result."

D

Analysis Under Restatement's Most Significant Relationship Test

Notwithstanding the court's conclusion that the application of lex loci delicti in the instant case would not lead to an arbitrary, irrational result, the court engages in the following

analysis under the Restatement factors because the trend in Connecticut's modern choice of law jurisprudence appears to require it.

The court begins with the § 145(2) contacts. As for § 145(2)(a), the place where the injury occurred, because the plaintiffs were injured in Florida, this factor weighs in favor of Florida law. See Restatement (Second), supra, § 145, comment (f) ("the place of injury is of particular importance in the case of personal injuries"). As discussed in part II.C of this opinion, the court does not consider Florida, as the place where the injury occurred, to be fortuitous.

With respect to § 145(2)(b), the place where the conduct allegedly causing the injury occurred, this contact also weighs in favor of applying Florida law. The plaintiffs' claims against Wal-Mart are premised on conduct that is alleged to have occurred at the Wal-Mart store location in Titusville, Florida. (Second Amended Complaint, Count One, ¶ 1; Count Two, ¶ 4.) The plaintiffs do not allege any wrongdoing on the part of Wal-Mart in any state other than Florida.

"According to the Restatement, those two factors [(2)(a) and (2)(b)] are the most significant in determining which state's tort law to apply." *Williams* v. *State Farm Mutual Automobile Ins. Co.*, 229 Conn. 359, 372, 641 A.2d 783 (1994); id., 372-73 (applying New York law where New York was place of injury and place of allegedly tortious conduct). Indeed, as comment (e) to § 145 provides: "When the injury occurred in a single, clearly ascertainable state and when the conduct which caused the injury also occurred there, that state will usually be the state of the applicable law . . . ."

The third factor, § 145(2)(c), requires the court to take into account the domicile, residence, nationality, place of incorporation, and place of business of the parties. Because the seat belt defense issue applies only to DeSalle and Videira, the court considers only the

domiciles of these plaintiffs on the one hand and the place of incorporation and place of business of Wal-Mart on the other hand. DeSalle and Videira were at the time of the accident, and remain, Connecticut domiciliaries. Putting aside the inconsistent information submitted by the parties, it is undisputed that Wal-Mart is a foreign limited partnership, not domiciled in Connecticut or Florida. Its place of business at issue in the present case is Titusville, Florida. When, as here, the parties are not "grouped in a single state," the fact that "one of the parties is domiciled or does business in a given state will usually carry little weight of itself." Restatement (Second), supra, § 145, comment (e). Accordingly, this factor provides little guidance to the court's analysis. See *Williams* v. *State Farm Mutual Automobile Ins. Co.*, supra, 229 Conn. 372-73 ("factor (c) is inconclusive because the plaintiff is domiciled in Connecticut but the tortfeasor carried a California motor vehicle operator's license and registered his car in New York"); *Rosenthal* v. *Ford Motor Co.*, supra, 462 F. Supp. 2d 302 (concluding that § 145(2)(b) did not aid court's inquiry where parties were not grouped in single state).

With respect to § 145(2)(d), "[w]hen there is a relationship between the plaintiff and the defendant and when the injury was caused by an act done in the course of the relationship, the place where the relationship is centered is another contact to be considered." Restatement (Second), supra, § 145, comment (e). Because it does not appear that DeSalle and Videira had any relationship with Wal-Mart in connection with the acts or omissions complained of in this case, the court finds that this factor also offers little aid in resolving the choice of law question. See *Williams* v. *State Farm Mutual Automobile Ins. Co.*, supra, 229 Conn. 373 ("factor (d) is irrelevant because there was no relationship between the parties other than the accident"); *Rosenthal* v. *Ford Motor Co.*, supra, 462 F. Supp. 2d 303 (finding factor (2)(d) to be inconclusive where only "relationship" between parties stemmed from purchase and installation

of tire). Guided by the above analysis under § 145, the court concludes that Florida had the greatest contact with the occurrence and DeSalle and Videira.

"Applying the choice of law analysis of §§ 145 and 6 to the facts of this case involves a weighing of the relative significance of the various factors that § 6 lists." *O'Connor* v. *O'Connor*, supra, 201 Conn. 651. Of greatest applicability to the current case are the considerations identified in § 6(2)(b), (c), and (e).[8] These considerations also lead to the application of Florida law.

The court contrasts the policies and interests of Florida, as the place of the injury, the conduct complained of, and the defendant's place of business at issue, with those of Connecticut, as the forum state and domicile of DeSalle and Videira. In doing so, the court analyzes the relevance of each state's § 145(2) contacts to the question of whether Wal-Mart should be permitted to assert the Florida seat belt defense as to the claims of these two plaintiffs.

In analyzing the policies and interests of Florida, the court finds particularly instructive the policy reasons provided by the *Pasakarnis* court in adopting a common law seat belt defense. First, the court relied on "the underlying philosophy of individual responsibility." *Insurance Co.*

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[8] With respect to § 6(2)(a), as in *O'Connor*, the court is "not today concerned with a case that offends systemic policy concerns of another state or country . . . ." *O'Connor* v. *O'Connor*, supra, 201 Conn. 651; see also *Rosenthal* v. *Ford Motor Co.*, supra, 462 F. Supp. 2d 304. As for § 6(2)(d), this factor is of less importance in this case, as "the settled expectations of parties are generally less important in unintentional torts than they are in fields such as contracts, property, and wills and trusts, in which parties make plans on the basis of the legal consequences of their conduct." *Williams* v. *State Farm Mutual Automobile Ins. Co.*, supra, 229 Conn. 373 n.16. Concerning § 6(2)(f), "[i]n a rapidly developing area, such as choice of law, it is often more important that good rules be developed than that predictability and uniformity of result should be assured through continued adherence to existing rules." Restatement (Second), supra, § 6, comment (i). With regard to § 6(2)(g), such policy should "not be overemphasized, since it is obviously of greater importance that choice-of-law rules lead to desirable results." Restatement (Second), supra, § 6, comment (j).

of N. Am. v. *Pasakarnis*, supra, 451 So. 2d 451. The court highlighted the safety value of the seat belt:

> The seat belt has been proven to afford the occupant of an automobile a means whereby he or she may minimize his or her personal damages prior to the occurrence of the accident. . . . [A]utomobile collisions are foreseeable as are the so-called 'second collisions' with the interior of the automobile. In view of the importance of the seat belt as a safety precaution available for a plaintiff's protection, failure to wear it under certain circumstances may be a pertinent factor for the jury to consider in deciding whether plaintiff exercised due care for his or her own safety.

Id., 453. This policy consideration emphasizing individual responsibility, which focuses on the conduct of the plaintiff(s), reflects that Florida has an interest in requiring occupants to wear available seat belts during the operation of a motor vehicle on Florida's roads. (Although the injured plaintiff in *Pasakarnis* was the driver, subsequent case law makes clear that the *Pasakarnis* common law seat belt defense applies to backseat passengers as well. See, e.g., *American Automobile Assn., Inc.* v. *Tehrani*, supra, 1987 Fla. App. LEXIS 8896, at *2-3.) Here, Florida was a vacation destination; the accident took place in Florida; the motor vehicle involved was registered in Florida; and DeSalle and Videira received preliminary medical care in Florida.

Second, the *Pasakarnis* court also reasoned that "the law will step in to protect people against risks which they cannot adequately guard against themselves." *Insurance Co. of N. Am.* v. *Pasakarnis*, 451 So. 2d 451. The court went on to recite the rationale underlying the doctrine of comparative negligence, that is, "that under this theory a plaintiff is prevented from recovering *only that proportion of his damages for which he is responsible. . . .*" (Citation omitted; emphasis in original; internal quotation marks omitted.) Id., 452. This policy consideration focuses on both the plaintiff and the alleged tortfeasor. This consideration is particularly strong where, as here, the alleged wrongful conduct on the part of Wal-Mart took place at one of its places of business in Florida.

Moreover, the Florida seat belt defense is not so cumbersome or confusing, such that its application overburdens the court or poses too great a risk of misapplication. See *Williams* v. *State Farm Mutual Automobile Ins. Co.*, supra, 229 Conn. 375. Florida's form jury instructions and the cases cited in this opinion should provide sufficient guidance for the court to be able to prepare a suitable jury charge.

Based on the foregoing, the court concludes that Florida has a significant interest in applying its common law seat belt defense to DeSalle's and Videira's claims against Wal-Mart.

The court next considers Connecticut's interests and policies with respect to the issue at hand. Connecticut has an obvious interest in this litigation because DeSalle and Videira were at the time of the accident, and remain, Connecticut domiciliaries. In that way, Connecticut has an interest in these plaintiffs having an opportunity for redress. Because application of the Florida seat belt defense does not provide a "special immunity" to Wal-Mart, DeSalle's and Videira's opportunity for redress is preserved, and Connecticut's interest is sufficiently satisfied.

Having weighed the above interests, the court concludes that Florida, as a non-fortuitous location of the challenged conduct and the location of the injuries, has the most significant relationship to the occurrence and the parties. Based on the foregoing analysis, the court holds that the Florida seat belt defense may be asserted.

The plaintiffs rely on the choice of law conclusions reached in *O'Connor* and *Rosenthal* v. *Ford Motor Co.*, 462 F. Supp. 2d 296 (2006), in which those courts arrived at applying Connecticut law. This court finds the circumstances of those cases to be readily distinguishable from the present case.[9] Two distinctions stand out.

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[9] Even in *Rosenthal*, the court considered the choice of law issue to be "a close question." *Rosenthal* v. *Ford Motor Co.*, supra, 462 F. Supp. 2d 301.

First, in *O'Connor* and *Rosenthal*, the courts considered the locations of the accidents to be entirely fortuitous. The *O'Connor* Court concluded that "application of the lex loci delicti doctrine makes determination of the governing law turn upon a purely fortuitous circumstance: the geographical location of the parties' automobile at the time the accident occurred." *O'Connor* v. *O'Connor*, supra, 201 Conn. 645-46; id., 636 ("the location of the automobile accident in Quebec was purely fortuitous"). In *Rosenthal*, the district court also found the place of injury (in that case, North Carolina) to be fortuitous. *Rosenthal* v. *Ford Motor Co.*, supra, 462 F. Supp. 2d 304-305.

In the present case, the plaintiffs argue that Florida as the location of the accident was purely fortuitous. For the reasons stated in part II.C of this opinion, the court does not consider Florida, as the location of the automobile at the time of the accident, to be fortuitous.

Second, in *O'Connor* and *Rosenthal*, had the courts concluded that the laws of the foreign jurisdiction applied, the respective plaintiffs would have been stripped of their ability to pursue the particular claims at issue. In *O'Connor*, if applied, Quebec's statutory scheme, providing for government funded compensation for physical injuries suffered in automobile accidents, would have precluded the plaintiff from pursuing a tort action. *O'Connor* v. *O'Connor*, supra, 201 Conn. 633-35. Notably, the Court expressly acknowledged that this recovery-barring characteristic, not present here, played a meaningful role in the Court's decision-making:

> Our conclusion that we should look to the law of Connecticut rather than to the law of Quebec in this case should not be construed as a blanket endorsement of reliance on Connecticut law in all circumstances. . . . We can readily conceive of circumstances . . . in which the choice between the relevant jurisdictions would be much more problematic. For example, Quebec law would have been entitled to greater weight . . . if the defendant's negligent conduct, *rather than the plaintiff's right to sue*, had been at issue.

(Emphasis added.) Id., 658-59.

Applying the law of the place of the accident would have had the same result in *Rosenthal*, in which the federal district court concluded that Connecticut law applied to the viability of the plaintiffs' strict liability claims, rather than the law of North Carolina (where the accident occurred). *Rosenthal* v. *Ford Motor Co.*, supra, 462 F. Supp. 2d 307. Had North Carolina law applied, the plaintiffs' strict liability claims would have been barred, as North Carolina did not recognize actions in strict products liability.[10] Id., 304-306.

In contrast, in the present case, applying Florida law to the question of the availability of a seat belt defense does not serve to bar any of DeSalle's or Videira's claims. Instead, it permits Wal-Mart to present, for the jury's consideration, a defense for comparative negligence purposes.

III
CONCLUSION

Based on the foregoing, the court grants Wal-Mart's motion (#236.00) and denies plaintiffs' motion (#401.00).

It is so ordered.

Moll, J. 10/13/16
Ingrid L. Moll
Superior Court Judge

[10] Moreover, the plaintiffs also rely on, inter alia, *Partman* v. *Budget Rent-A-Car*, 43 Conn. Sup. 239 (Super. Ct. 1994), in support of their argument that a foreign seat belt defense cannot be asserted against Connecticut residents in Connecticut courts. Simply put, this court does not find that decision to be persuasive because, in this court's view, it overemphasized the domicile of the plaintiff where there was no unity of domicile among the parties, which appears to be at odds with the analysis set forth in *Williams* v. *State Farm Mutual Automobile Ins. Co.*, supra, 229 Conn. 372-73.